IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.
Court No. 3

Criminal Misc. Application No. 681/2001
(Old No. 7793/90)

S.C. Mathur S/o K.D. Mathur,
R/o 181, Nari Shilp Mandir Road Dehradun …… Applicants.

Versus

1. State of U.P.
2. V.P. Singh S/o Dharamvir Singh
   R/o 31 Nehru Marg Dehradun ……. Respondents.

Hon'ble Irshad Hussain, J.

This is a criminal miscellaneous application under section 482 of the Code of Criminal Procedure (for short 'Code') with a payer to set aside the order dated 31.7.1989 passed by C.J.M. Dehradun dismissing the complaint under section 203 of the 'Code' and judgment and order dated 22.12.1989 passed by the learned Sessions Judge Dehradun dismissing the revision preferred by the appeared against the order passed by the C.J.M.

3. None appeared for the respondent No.2. despite service of notice. Heard Sri Lokendra Dobhal learned counsel for the petitioner and perused the record of the petition.

4. The facts of the case are that the petitioner Sri S.C.Mathur entered into an agreement with respondent No.2 on Sri V.P.Singh for sale of compressor to the respondent No.2 on 1.2.1989. The price fixed was 75,000/-. The respondent No.2 paid a sum of Rs. 15000/- in cash and further gave two cheques of Rs. 30,000/- each to the petitioner who then delivered the compressor to respondent No.2 When the cheques were presented for encashment it was found that account number of the respondent No.2 was not mentioned and thus these cheques could not be encashed. The respondent No.2 also did not pay the said amount of Rs. 60,000/-. The petitioner alleging that he had been cheated filed a written complaint for offence under section 420 I.P.C.

5. The learned C.J.M. Dehradun on perusal of the evidence under session 200 and 202 of the 'Code' and advice of the concerned bank was of the view that there was no element of deception for the purpose of cheating by respondent No.2 in as much as there was a stipulation in the agreement that if the cheques could not be encashed the sum of Rs. 15000/- paid in cash

shall be forfeited. Accordingly the written complaint was dismissed under section 203 of the 'Code' per order dated 31.7.1989. The learned Sessions Judge in his revisional jurisdiction did not find any impropriety in the view so taken and dismissed the criminal revision per judgment and order dated 22.12.1989.

6. The learned counsel for the petitioner submitted that since the respondent No.2 has deliberately not mentioned the account numbers on the two cheques given to the petitioner, his intention was from the very beginning to deceive the petitioner in the delivery of the compressor without making payment of the remaining purchase money and that the learned C.J.M. as well as the learned Sessions Judge failed to take into account this aspect of the matter while making appreciation of the facts the case. Annexure-1, is the reproduction of the agreement entered into between the parties. The stipulation of forfeiture of sum of Rs. 15000/- referred above is here and if the two cheques were not encased by virtue of the said stipulation in the agreement the amount of Rs. 15000/- got forfeited.

7. This apart other options are also available to the petitioner for realization of remaining price money of the compressor as stipulated in the written agreement which was consciously executed by the parties when the sale transaction was finalized. The petitioner could very well proceed to have his claim satisfied in term of the written agreement and in the peculiar facts of the case both the courts below have rightly found it to be a dispute of civil natural and there being no element of deception for the purpose of cheating the criminal complaint was rightly dismissed. In the face of the facts of the case the reported decisions Kamaladevi Agarwal vs. State of West Bengal and others; (2002) 1 Supreme Court cases 555 and Smt. Muniba Khatoon and others vs. Satpal Kalra; 1997(35) ACC 708 relied upon by the learned counsel for the petitioner are not attracted here. The reason is that the facts of the reported cases were at variance in as much as in the fist mentioned case there was evidence of forgery of the signatures of the partners of the firm for the purpose of illegal gain and whereas in the latter mentioned case the wrong doer had impersonated while executing an agreement of sale of a plot and thereby induced the person cheated to part with the money.

8. In view of the above there being no merit in this petition the same is hereby dismissed.

(Irshad Hussain, J.)

Dated: 18-10-2003
ISB